SBCivil Writ Petition No.3957/2004

Hari Singh Rathore
Vs.
State of Rajasthan & Ors.

Date of Order :: 22nd August, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Miss Kusum Rao, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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The petitioner, a Class-IV employee in the office of Joint Registrar, Cooperative Societies, Udaipur, by way of submitting an application dated 24.11.1999, made a request to undergo voluntary retirement from service w.e.f. 31.3.2000. The request of the petitioner was accepted by the Registrar, Cooperative Societies, under an order dated 8.3.2000, however, by an another application dated 22.3.2000 the petitioner withdrew his request seeking voluntary retirement. The Joint Registrar on the same day i.e. 22.3.2000 forwarded the application of the petitioner to the Registrar, Cooperative Societies, Jaipur but no action thereon was taken by the respondents and the petitioner was placed under retirement w.e.f. 31.3.2000. Being aggrieved by the same, the petitioner preferred this petition for writ.

The contention of counsel for the petitioner is that the request for seeking voluntary retirement

was withdrawn prior to effective date i.e. 31.3.2000 with a specific reason, therefore, the respondents should have accepted the same by cancelling the order dated 8.3.2000. To substantiate the contention reliance is placed by counsel for the petitioner upon a Division Bench judgment of this Court in the case of State of Rajasthan & Ors. v. Achlaram, reported in 2005(1) WLC (Raj.) 796, wherein this Court held as under:-

> "13.-The argument raised by the counsel for appellants does not hold good in the light of Rule 50 sub-rule(2) read with sub-rule(4) of the Rules of 1996. Sub-rule(2) & (4) of Rule 50 of the Rules of 1996, if read together, clearly indicate that such employee, who has completed 20 years in service, may after giving at least three months' previous notice in writing to the appointing authority, which requires acceptance by the competent authority and if the authority does not refuse to grant permission for retirement before the expiry of the period specified in the notice, the retirement automatically becomes effective from the date of expiry of the said period and correspondingly under sub-rule(4) of the Govt. Servant who elects to retire can withdraw his application seeking voluntary retirement before the intended date of his retirement as referred to by him in his application. In such a situation, the very submission made by the learned counsel for the appellants is devoid of any merit. We are also in agreement with the finding

recorded by the learned Single Judge and which does not call for any interference by this Court."

Per contra, it is urged by the respondents in reply to the writ petition that request for voluntary retirement could not be withdrawn once it is accepted by the authority competent. Reference of sub-rule(4) of Rule 50 of the Rajasthan Civil Services (Pension) Rules, 1996 (hereinafter referred to as "the Rules of 1996") is given in this regard.

Heard counsel for the parties.

There is no dispute that the petitioner submitted application for withdrawal of the request for seeking voluntary retirement prior to the date from which the retirement was to be effective. The petitioner while submitting such application also gave a reason i.e. the change in his domestic conditions. The Division Bench of this Court in the case of State of Rajasthan & Ors. v. Achlaram (supra) in quite unambiguous terms held that the request for voluntary retirement in spite of its acceptance can be withdrawn before effective date. Hon'ble Division Bench reached at the conclusion aforesaid after considering the effect of the provisions of sub-rule(4) of Rule 50 of the Rules of 1996.

The law laid down by Division Bench of this Court in the case of State of Rajasthan & Ors. v. Achlaram (supra) is having absolute application in present controversy and in light of that this petition for writ deserves acceptance.

Accordingly, the writ petition is allowed. The order dated 8.3.2000 retiring the petitioner w.e.f. 31.3.2000 is declared illegal and same is hereby quashed. The petitioner is entitled to be reinstated in service with all consequential benefits. However, whatever retiral benefits withdrawn by the petitioner are required to be adjusted against arrears of pay which are required to be given to the petitioner as a consequence of declaring his retirement w.e.f. 31.3.2000 illegal.

No order to cost.

(GOVIND MATHUR),J.

kkm/ps.